

Basic 40-Hour Domestic Relations Mediation Training Program Standards

The Indiana Commission for Continuing Legal Education is required under the Indiana Alternative Dispute Resolution Rules to certify training programs for mediators. The Commission has adopted the following standards to ensure that training programs are high quality and are uniformly treated.

I. GENERAL

- The primary trainer shall deliver all the mediation skills portions of the training. Training assistants may be used to critique role plays, to moderate small group discussions, and to participate in role play simulations.
- Experts shall be used to teach: (1) “Psychological Issues in Domestic Relations Litigation and Mediation;” (2) “Communications Skills and Knowledge” and “Interpersonal Dynamics;” and (3) “Issues Concerning Needs of Families over Time.” Additional experts may be used to teach specialized areas, once they are approved by the Commission for this purpose.
- Participants must attend each session in its entirety, or they will not receive a training certificate or be listed on the Indiana Commission for Continuing Legal Education Registry of Approved Domestic Relations Court Mediators.
- A basic domestic relations training course must last a minimum of forty (40) hours.
- Basic domestic relations training courses are awarded twenty-four (24) hours of continuing legal education credit and six (6) hours of professional responsibility credit.
- An Indiana attorney who teaches the Indiana law component or ethics component shall receive CLE or ethics credit at a 4:1 ratio. Assistant trainers will receive CLE credit at a 2:1 ratio. Primary trainers may receive CLE credit at a ratio of 2:1 or twenty-four (24) hours, whichever is less.
- At the discretion of the primary trainer, some topics may be combined and taught using alternate methods. Although some topics must still be taught through role play, role play facts and law can be applied in such a way as to fulfill other curriculum requirements.
- Trainers must submit a list of all attendees to the Commission within thirty (30) days of the final day of training.

II. TRAINER AND EXPERT QUALIFICATIONS

A. Primary Trainer

1. The primary trainer must be a mediator in good standing and an attorney in good standing in some state.

- a. The primary trainer shall not have been disqualified from mediation or the practice of law in any state.
 - b. If the primary trainer is not an attorney in Indiana, an Indiana attorney must be approved by the Commission for the purpose of teaching Indiana Alternative Dispute Resolution Rules and Indiana case law on mediation.
 2. The primary trainer must have taken a basic mediation course recognized by a state as approved for training court-sanctioned mediation.
 3. For initial or first-time approval the primary trainer must have mediated fifty (50) pending court cases or pre-suit cases, and mediated or supervised twenty-five (25) pending court cases or pre-suit cases within the year preceding the application for certification. On an ongoing basis, the primary trainer should engage regularly and currently in the practice or teaching of mediation.
- B. Assistant Trainers
1. Assistant trainers must be mediators in good standing in some state. Assistant trainers shall not have been disqualified from mediation or from the practice of law in any state.
 2. Assistant trainers must have taken a basic mediation course recognized by a state as approved for training court-sanctioned mediation.
 3. For initial or first-time approval, assistant trainers must have mediated twenty-five (25) pending court cases or pre-suit cases, and mediated or supervised ten (10) pending court cases or pre-suit cases within the year preceding the application for certification. On an on-going basis, assistant trainers should engage regularly and currently in the practice or teaching of mediation.
- C. Experts
1. Experts shall be used to teach: “Psychological Issues in Domestic Relations Litigation and Mediation” and “Communications Skills and Knowledge”, “Interpersonal Dynamics” and “Issues Concerning Needs of Families over Time.”

At a minimum the Commission considers the following to determine whether an individual is an expert qualified to teach these issues:

- a. Classes taught in the behavioral, social science, communications, or mediation fields;
 - b. Degree programs (classes taken in pursuit of a degree in the behavioral, social science or communications fields);
 - c. Experience in the behavioral, social science or communications field (i.e. as a therapist or practitioner); and
 - d. Research and writing in the behavioral, social science or communications fields.
2. The Commission must also approve the use of any other experts.

At a minimum the Commission considers the following to determine whether an individual is an expert qualified to teach these issues:

- a. Classes taught by the individual dealing with the topic;
- b. Degree programs;
- c. Experience in the field in question; and,
- d. Research and writing in the field in question

III. TRAINING METHODOLOGY

- A variety of teaching techniques shall be employed including: lecture, group discussion, written exercises, mediation simulations, role plays and reading. Some topics may be taught primarily or entirely through simulations and/or role plays rather than or in addition to other methods. At a minimum, every participant must take part in at least one complete role play as the mediator and one complete role play as the party. A trainee must perform each of these role plays under the observation of a primary trainer or training assistant.
- The primary trainer or training assistant may view no more than two role plays simultaneously.

IV. CURRICULUM, IN GENERAL

- Trainers must submit: a completed “Domestic Relations Mediation Training Program Application for Supreme Court Certification;” program agenda (including time breakdowns for each topic); bibliography of recommended reading; summary of materials to be used in the training; speaker, expert and trainer biographies; completed “Mediation Trainer Application” forms; and completed “Mediation Expert Application” forms.
- Required reading for the course shall include the Indiana Alternative Dispute Resolution Rules, Indiana Family Law Title 31, Indiana Child Support Rules and Guidelines, and the Indiana Parenting Time Guidelines. Readings do not count toward the forty (40) hours of training required. They should be assigned and completed prior to the training or at times when the training program is not being conducted. Trainers are encouraged to ensure the readings are completed.

V. CURRICULUM, MINIMUM REQUIRED TOPICS

- The following items must be addressed for the minimum time specified. Items A, B, C and D must be taught by an Indiana attorney in good standing.
 - A. **Indiana Rules on ADR** (minimum two (2) hours)
ADR Rules 1-8.
 - B. **Mediation Case Law Update**, with an emphasis on ethics issues (minimum two (2) hours) Note: case law update should deal with the existing and emerging body of mediation law in these areas, not only in Indiana.

Topics at a minimum should include the following:

1. Conflicts of interest
2. Confidentiality and its limits
3. Facilitating fair, reasonable and voluntary agreements

4. Promotion of mutual respect to the participants in the mediation session including power balancing and control and decorum
5. Maintaining impartiality and neutrality
6. Dealing ethically with claims or evidence of domestic violence, substance abuse and child abuse
7. Standards recommended by national associations
8. Role of mediators as officers of the court
9. Addressing cultural differences when mediating
10. Mediator malpractice concerns
11. Disciplinary procedures
12. Difference between court ordered and voluntary mediation
13. Relevant court rules, local procedures and forms
14. Required disclosures to mediation participants
15. Distinguishing between legal information or education, and legal advice
16. Special considerations when dealing with self-represented mediation parties, including drafting documents
17. Interest of third parties, especially the children
18. Whether and how to involve children in the mediation process

C. Indiana Family Case Law (Minimum four (4) hours) (reviewing statutes, rules, guidelines and key case law)

Topics at a minimum should include the following:

1. Property distribution (including a brief overview of tax consequences of certain distributions and when to refer issues to an accountant or tax lawyer)
2. Child support and related issues, e.g. health insurance, payment of medical expenses, and income withholding orders (including applicable guidelines, worksheets, and forms)
3. Custody and parenting time (including applicable guidelines) for parents, (considering applicable standards) and “children’s best interests” from the legal perspective
4. Third-party custody and guardianship
5. Grandparent and other third-party visitation
6. Distinguishing features and differences in dissolution of marriage, paternity, guardianship, abuse and neglect (CHINS), termination of parental rights, and adoption cases as these relate to mediation practice
7. Tax exemptions, state and federal
8. Bankruptcy considerations and referral to bankruptcy attorneys in the mediation context
9. Legal context of mediation
10. Durability/flexibility of mediated agreements
11. Mechanics of interpreting/enforcing mediated agreements

D. Lawyers in Mediation (minimum one (1) hour)

Topics at a minimum should include the following and must be taught by an expert:

1. Role of litigants' lawyers in the mediation process
2. Attorney/client relationships
3. Establishing credibility with lawyers
4. Attorney fee issues
5. Dealing with legal issues
6. Private sessions with lawyers
7. Attorney malpractice concerns
8. Discovery issues

E. Psychological Issues in Domestic Relations Litigation and Mediation (minimum four (4) hours)

Topics at a minimum should include the following and must be taught by an expert:

1. Family relationships and how they are impacted by separation and divorce
2. Domestic violence, also known as intimate partner violence and abuse
3. Child abuse or neglect
4. Substance abuse
5. Relationship of financial and custody issues
6. Psychologically dysfunctional disputants
7. Use of mental health experts and resources
8. Identification of other psychological issues and referral sources

F. Interpersonal Dynamics in Communications (minimum two (2) hours):

1. Common issues surrounding relationship of litigants
2. Forming relationships and building rapport
3. Establishing trust
4. Setting a cooperative tone
5. Empathetic listening and questioning
6. Using self as a barometer for understanding party reactions
7. Staying non-judgmental

G. Issues Concerning Needs of Families over Time (minimum four (4) hours)

Topics at a minimum should include the following and must be taught by an expert:

1. Differing perspectives of parents and children, and how these perspectives may change over time
2. Impact of legal processes and children's attitudes/behavior
3. Co-parenting and shared parental responsibility
4. Parenting agreements from the mental health professional's point of view

5. How different parties' needs change over time and how to anticipate and manage these changes
6. How needs in the initial separation differ from needs in a modification of an order or agreement
7. "Best interests of the child" from the social science perspective
8. Community resources and experts for family needs
 - a. Referral processes
 - b. When to refer/for what purpose
 - c. Most common types of referrals

H. Special Considerations when Mediating Cases with Domestic Violence (minimum four (4) hours)

Topics at a minimum should include the following and except for (6), at the Primary Trainers discretion may be taught by an expert who teaches Psychological Issues in Domestic Relations Litigation and Mediation.

1. Characteristics, dynamics, and risks in differing types of domestic violence
2. How domestic violence may affect the parties' ability to communicate, present information and make decisions (e.g., the effect that fear may have on a victim)
3. How to conduct effective screening for domestic violence
4. How to use the results of screening to determine whether or not mediation is appropriate when there has been domestic violence
5. How to provide accommodations in mediation that take into account the victim's safety and ability to make voluntary, non-coerced decisions when
 - a. there has been domestic violence
 - b. all parties nevertheless wish to mediate, and
 - c. the mediator believes it is appropriate to conduct the mediation
6. Whether and how to mediate when there is a protective order or no contact order between the parties to a mediation (must be taught by an attorney)
7. The role of a support person, if any, in mediation

I. Communications Skills and Knowledge

Topics at a minimum should include the following and must be taught by an expert or by the primary trainer:

1. Listening
2. Responding
3. Guiding
4. Paraphrasing
5. Confronting
6. Reframing
7. Attending to non-verbal communication
8. Identifying areas of consensus and disagreement
9. Questioning

10. Clarifying
11. Using clear, neutral language
12. Balancing communication
13. Modeling constructive behavior

The remaining hours shall be devoted to:

J. Introduction to Conflict Resolution Theory

1. Conciliation, mediation, arbitration-definitions and distinctions
2. Negotiation theory
3. The effect of mediation at various stages of litigation, including pre-suit
4. Mediation process
5. Review of mediation effectiveness

K. Information Gathering Skills and Knowledge

This area must include a structured role play. The exercise should highlight:

1. Questioning
2. Setting the agenda and prioritizing areas
3. Identifying issues
4. Exploring parties' background interests and concerns

L. Problem-Solving Skills and Knowledge

This area must include a structured role play. The exercise should highlight:

1. Identifying and analyzing problems and needs
2. Collecting data
3. Prioritizing issues
4. Framing issues
5. Narrowing issues
6. Converting positions into needs and interests
7. Educating parties
8. Identifying areas of agreement
9. Identifying principles and criteria to assist in decision-making
10. Designing temporary plans
11. Developing options and brainstorming
12. Evaluating options and consequences
13. Testing reality
14. Developing an implementation plan
15. Assisting parties to identify alternatives to a mediated agreement

M. Ethical Decision-Making and Values Skills and Knowledge

1. Understanding mediation standards of ethical practice
2. Being sensitive to parties' values, including culture

3. Remaining non-judgmental
4. Establishing a commitment to honest disclosure
5. Maintaining dignified behavior
6. Being respectful of the parties
7. Not imposing personal and professional values
8. Establishing and maintaining a right to self-determination by the parties
9. Honoring the uniqueness of parties
10. Ensuring individual responsibility of parties for themselves
11. Establishing the importance of each individuals participation
12. Ensuring voluntary agreements and participation
13. Empowering parties
14. Dealing with commonly encountered ethical dilemmas

N. Interaction and Conflict Management

This area must include a structured role play. The exercise should highlight:

1. Using ground rules
2. Reducing tensions
3. Balancing power
4. Refocusing
5. Confronting
6. Strategizing/orchestrating
7. Caucusing
8. Managing impasse
9. Empowering parties
10. Distracting/redirecting
11. Dealing with strong emotions
12. Maintaining control of the process
13. Managing the influence of non-parties

O. Professional Skills and Knowledge

1. Case management
2. Community and legal resources
3. Drafting memoranda and agreements
4. Effective use of outside experts
5. Obtaining, recording and monitoring factual information
6. Dealing with complex factual materials
7. When and how to refer issues to other forms of alternative dispute resolution
8. Referral criteria (e.g. to accountants, appraisers, etc.)

VI. RECERTIFICATION

- Any mediation training program, certified by the Indiana Commission for Continuing Legal Education as meeting these standards, is certified for a period of five (5) years from the date of

approval. However, the trainer must submit a listing of scheduled courses at least forty-five (45) days before each course, giving the date, time and place of the course. Any material change in the course (such as a change in a primary trainer, expert or the curriculum) requires a new application to the Commission.

VII. DECERTIFICATION

- The Commission has the right to audit certified programs. Such an audit may include, but is not limited to: attendance of any part of the course; examination of evaluation forms; examination of curriculum and written materials; and, interviewing participants. Programs which are determined to no longer comply with these standards will be decertified.